



भारत का राजपत्र The Gazette of India

प्रसाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 52] नई दिल्ली, मंगलवार, अगस्त 18, 1992/श्रावण 27, 1914
No. 52] NEW DELHI TUESDAY, AUGUST 18, 1992/SRAVANA 27, 1914

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on 18th August, 1992:—

BILL No. 133 OF 1992

A Bill to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.

WHEREAS decisions were taken at the United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, calling upon the States to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages;

AND WHEREAS it is considered expedient to implement the decisions of the aforesaid Conference so far as they relate to the protection of environment and payment of compensation for damage to persons, property and the environment while handling hazardous substances.

BE it enacted by Parliament in the Forty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title
and com-
mencement.

1. (1) This Act may be called the National Environment Tribunal Act, 1982.

(2) It shall come into force on such date or dates as the Central Government may, by notification, appoint, and different dates may be appointed for different States and any reference in any provision of this Act to the commencement of this Act shall be construed in relation to any State or part thereof as a reference to the coming into force of that provision in that State or part thereof.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “accident” means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure to death of, or injury to, any person or damage to any property or environment but does not include an accident by reason only of war or radio-activity;

(b) “Bench” means a Bench of the Tribunal;

(c) “Chairman” means the Chairman of the Tribunal;

(d) “environment” includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

(e) “handling”, in relation to any hazardous substance, means the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance;

(f) “hazardous substance” means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified by the Central Government under the Public Liability Insurance Act, 1991;

29 of 1986.
6 of 1991.

(g) “Judicial Member” means a Member of the Tribunal appointed as such under this Act, and includes the Chairman or a Vice-Chairman who possesses any of the qualifications specified in sub-section (3) of section 11;

(h) “Member” means a Member (whether Judicial or Technical) of the Tribunal, and includes the Chairman and a Vice-Chairman;

(i) “notification” means a notification published in the Official Gazette;

(j) “prescribed” means prescribed by rules made under this Act;

(k) "rules" means the rules made under this Act;

(l) "Technical Member" means a Member of the Tribunal who is not a Judicial Member within the meaning of clause (g);

(m) "Tribunal" means the National Environment Tribunal established under section 9;

(n) "Vice-Chairman" means the Vice-Chairman of the Tribunal;

Explanation.—In the case of the Tribunal having two or more Vice-Chairmen, references to the Vice-Chairman in this Act shall be construed as a reference to each of those Vice-Chairmen;

(o) "owner" means a person who owns, or has control over handling, any hazardous substance at the time of accident and includes,—

(i) in the case of a firm, any of its partners;

(ii) in the case of an association, any of its members; and

(iii) in the case of a company, any of its directors, managers, secretaries or other officers who is directly in charge of, and is responsible to, the company for the conduct of the business of the company.

CHAPTER II

COMPENSATION FOR DEATH OF, OR INJURY TO, A PERSON AND DAMAGE TO PROPERTY AND ENVIRONMENT

3. (1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident, the owner shall be liable to pay compensation for such death, injury or damage under all or any of the heads specified in the Schedule,

Liability to pay compensation in certain cases on principle of no fault.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

Explanation.—For the purposes of this section,—

(i) "workman" has the meaning assigned to it in the Workmen's Compensation Act, 1923;

(ii) "injury" includes permanent total or permanent partial disability or sickness resulting out of an accident.

(3) If the death, injury or damage caused by an accident cannot be attributed to any individual activity but is the combined or resultant effect of several such activities, apportionments and processes, the Tribunal may apportion the liability for compensation amongst those responsible for such activities, apportionments and processes on an equitable basis.

4. The Central Government may, by notification, exempt from the operation of this Act any owner, namely:—

Exemption from liability.

(a) the Central Government;

(b) any State Government;

(c) any corporation owned or controlled by the Central Government or a State Government; or

(d) any local authority.

5. (1) An application for claim for compensation may be made—

(a) by the person who has sustained the injury;

(b) by the owner of the property to which the damage has been caused;

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased;

(d) by an agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be;

(e) by any representative body or organisation, functioning in the field of environment and recognised in this behalf by the Central Government, under all or any of the heads specified in the Schedule; or

(f) by the Central Government or a State Government or a local authority under all or any of the heads specified in the Schedule :

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

(2) Any claimant making an application under sub-section (1) may also make an application before the Tribunal for such relief as is provided in the Public Liability Insurance Act, 1991:

6 of 1991.

Provided that no such application shall be made if the relief has been received by the claimant earlier or an application made by the claimant to the Collector under the said Act is pending and has not been withdrawn.

(3) The Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of the matters specified in the Public Liability Insurance Act, 1991 as the Collector has and may exercise and, for this purpose, the provisions of that Act shall have effect subject to the modification that the references therein to the Collector shall be construed as including a reference to the Tribunal.

6 of 1991.

(4) Every application under sub-section (1) shall be made to the Tribunal and shall contain such particulars and shall be accompanied by such documents and such fee, not exceeding one thousand rupees, as may be prescribed:

Provided that no fee shall be payable by a person whose annual income is below the prescribed limit or by a representative body or

Applica-
tion for
claim
for com-
pensation.

organisation referred to in clause (e) of sub-section (1) or by the Central Government, a State Government or a local authority.

(5) No application for compensation shall be entertained unless it is made within five years of the occurrence of the accident.

6. (1) On receipt of an application under sub-section (1) of section 5, the Tribunal may, after such inquiry as it may deem fit, reject the application summarily.

Procedure
and
powers of
Tribunal.

(2) Where the Tribunal does not reject the application under sub-section(1), the Tribunal may, after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim or each of the claims and may make an award determining the amount of compensation which appears to be just and specifying the person or persons to whom such amount of compensation shall be paid.

5 of 1908.

(3) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry.

5 of 1908.

(4) The Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872.

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it *ex-parte*;

(h) setting aside any order of dismissal of any application for default or any order passed by it *ex-parte*; and

(i) any other matter which is to be or may be prescribed.

7. Notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless—

Conditions
as to
making of
interim
orders.

(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter:

Provided that the Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measures if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss or damage being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order.

Reduction
of amount
of relief
paid under
any other
law.

8. Where in respect of death of, or injury to, any person or damage to any property, the owner, liable to any compensation under this Act, is also liable to pay any amount as relief under the Public Liability Insurance Act, 1991 or any other compensation under any other law, the amount of compensation payable under this Act shall be reduced by the amount of relief and other compensation paid under any other law.

6 of 1991.

CHAPTER III

ESTABLISHMENT OF NATIONAL ENVIRONMENT TRIBUNAL AND BENCHES THEREOF

Establish-
ment of
National
Environ-
ment
Tribunal.

9. The Central Government shall, by notification, establish a Tribunal to be known as the National Environment Tribunal, to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Composi-
tion of
Tribunal
and
Benches
thereof.

10. (1) The Tribunal shall consist of a Chairman and such number of Vice-Chairman, Judicial Members and Technical Members as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Technical Member.

(3) Notwithstanding anything contained in sub-section (1), the Chairman—

(a) may, in addition to discharging the functions of the Judicial Member or the Technical Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be, the Technical Member, of any other Bench;

(b) may transfer the Vice-Chairman or other Member from one Bench to another Bench;

(c) may authorise the Vice-Chairman or the Judicial Member or the Technical Member appointed to one Bench to discharge also the functions of the Vice-Chairman or, as the case may be, the Judicial Member or the Technical Member of another Bench; and

(d) may, for the purpose of securing that any case or cases which, having regard to the nature of the questions involved, requires or require, in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than two members, issue such general or special orders, as he may deem fit:

Provided that every Bench constituted in pursuance of this clause shall include at least one Judicial Member and one Technical Member.

(4) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may, by general or special order, specify:

Provided that if at any stage of the hearing of any such case or matter, it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to such Bench as the Chairman may deem fit. . .

(5) Subject to the other provisions of this Act, the Benches of the Tribunal shall ordinarily sit at New Delhi (which shall be known as the principal Bench) and at such other places as the Central Government may, by notification, specify.

11. (1) A person shall not be qualified for appointment as the Chairman unless he—

(a) is, or has been, a Judge of the Supreme Court or a High Court; or

(b) has, for at least two years, held the office of Vice-Chairman.

(2) A person shall not be qualified for appointment as the Vice-Chairman unless he—

(a) is, or has been, a Judge of a High Court; or

(b) has, for at least, two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; or

(c) (i) has, for at least five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India; and

(ii) has adequate knowledge of, or experience in, legal administrative, scientific or technical aspects of the problems relating to environment; or

Qualifications for appointment as Chairman, Vice-Chairman or other Member.

(d) has, for at least three years, held office as a Judicial Member or a Technical Member.

(3) A person shall not be qualified for appointment as a Judicial Member unless he—

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in grade I of that Service for at least three years.

(4) A person shall not be qualified for appointment as a Technical Member unless he has adequate knowledge of, or experience in, or capacity to deal with, administrative, scientific or technical aspects of the problems relating to environment.

(5) Subject to the provisions of sub-sections (6) and (7), the Chairman, Vice-Chairman and every other Member of the Tribunal shall be appointed by the President.

(6) No appointment of a person possessing the qualifications specified in this section as the Chairman or the Vice-Chairman shall be made except after consultation with the Chief Justice of India.

(7) No appointment of a person as a Judicial Member or a Technical Member shall be made except on the recommendation of a Selection Committee appointed by the Central Government consisting of the following, namely:—

(a) Chairman of the Tribunal; —Chairman of the Committee *ex officio*;

(b) Secretary to the Government of India in the Ministry of Environment and Forests; —member *ex officio*;

(c) Secretary to the Government of India in the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs); —member *ex officio*;

(d) Director-General, Council of Scientific and Industrial Research; —member.

(e) an Environmentalist to be nominated by the Central Government.

Vice-Chairman to act as Chairman or to discharge his functions in certain circumstances.

12. (1) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman or, as the case may be, such one of the Vice-Chairmen, as the Central Government may, by notification, authorise in this behalf, shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman or, as the case

may be, such one of the Vice-Chairman, as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

13. The Chairman, Vice-Chairman and other Member shall hold office as such for a term of five years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of five years:

office.
Term of

Provided that no Chairman, Vice-Chairman or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairman, the age of seventy years;

(b) in the case of the Vice-Chairman, the age of sixty-five years;
and

(c) in the case of any other Member, the age of sixty-two years.

14. (1) The Chairman, Vice-Chairman or other Member may, by notice in writing under his hand addressed to the President, resign his office:

Resigna-
tion and
removal.

Provided that the Chairman, Vice-Chairman or other Member shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairman, Vice-Chairman or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairman, Vice-Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman or other Member referred to in sub-section (2).

15. The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, Vice-Chairman and other Member shall be such as may be prescribed:

Salaries
and
allow-
ances
and
other
terms
and
condi-
tions of
service
of Chair-
man,
Vice-
Chair-
man and
other
Members.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, Vice-Chairman or other Member shall be varied to his disadvantage after his appointment.

Provi-
sion as
to the
holding
of offices

16. On ceasing to hold office,—

(a) the Chairman of the Tribunal shall be ineligible for further employment either under the Government of India or under the Government of a State;

by Chair-
man, etc.,
on ceasing
to be
such
Chairman,
etc.

(b) the Vice-Chairman of the Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman of the Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(c) a Member (other than the Chairman or Vice-Chairman) of the Tribunal shall, subject to the other provisions of this Act, be eligible for appointment as the Chairman or Vice-Chairman of the Tribunal or as the Chairman, Vice-Chairman or Member of any other Tribunal, but not for any other employment either under the Government of India or under the Government of a State;

(d) the Chairman, Vice-Chairman or other Member shall not appear, act or plead before the Tribunal.

Explanation.—For the purposes of this section, employment under the Government of India or under the Government of a State includes employment under any local or other authority within the territory of India or under the control of the Government of India or under any corporation or society owned or controlled by the Government.

Finan-
cial and
adminis-
trative
powers
of
Chair-
man.

17. The Chairman shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules:

Provided that the Chairman shall have authority to delegate such of his financial and administrative powers as he may think fit to the Vice-Chairman or any other officer of the Tribunal, subject to the condition, that the Vice-Chairman or such officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairman.

Staff of
the Tri-
bunal.

18. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide the tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the tribunal shall discharge their functions under the general superintendence of the Chairman.

(3) The salaries and allowances and conditions of service of the officers and other employee of the tribunal shall be such as may be prescribed.

Distribu-
tion of
business
amongst
the
Benches.

19. (1) Where any Benches of the Tribunal are constituted, the Central Government may, from time to time, by notification, make provisions as to the distribution of the business of the Tribunal amongst the Benches and specify the matters which may be dealt with by each Bench.

(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairman shall be final.

Explanation.—For the removal of doubts, it is hereby declared that the expression "matters" includes applications for interim relief.

CHAPTER IV

JURISDICTION AND PROCEEDING OF THE TRIBUNAL

20. On and from the commencement of this Act, no court or other authority except the Tribunal shall have, or be entitled to exercise, any jurisdiction, powers or authority to entertain any application or action for any claim for compensation which may be entertain or dealt with by the Tribunal.

Bar of jurisdiction.

21. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.

Power of Chairman to transfer cases from one Bench to another.

22. If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case including those who first heard it.

Decision to be taken by majority.

23. (1) Where any amount of compensation is ordered to be paid under any award by the Tribunal on the ground of any damage to environment, that amount shall be remitted to the authority specified under sub-section (3) of section 7A of the Public Liability Insurance Act, 1991 for being credited to the Environmental Relief Fund established under that section.

Deposit of amount payable for damage to environment.

6 of 1991.

(2) The amount of compensation credited to the Environmental Relief Fund under sub-section (1) may be utilised by such person or authority, in such manner and for such purposes of environment as may be prescribed.

24. (1) An award made by the Tribunal under this Act shall be executable by the Tribunal as a decree of Civil Court, and for this purpose, the Tribunal shall have all the powers of a Civil Court.

Execution of award or order of Tribunal.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may transmit to the Collector having jurisdiction over the area in which the accident has occurred the copy of the order made by it for payment of relief as provided in the Public Liability Insurance Act, 1991 and the Collector shall execute the order in the same manner as if it were an order made by him under that Act.

6 of 1991.

(3) Where the owner against whom the award or order is made by the Tribunal fails to make the payment or deposit the amount as directed by the Tribunal within the period specified in the award or order, such amount shall be recoverable from the owner as arrears of land revenue or of public demand.

Appeals.

25. (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law, an appeal shall lie against any award or other order, not being an interlocutory order, of the tribunal to the Supreme Court on one or more of the grounds specified in section 100 of that Code.

5 of 1908.

(2) No appeal shall lie against an award or other order made by the Tribunal with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of ninety days from the date of the award or other order appealed against:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the Supreme Court unless he has deposited with it the amount so awarded in the manner directed by the Supreme Court;

Provided further that the Supreme Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

CHAPTER V

MISCELLANEOUS

Penalty for failure to comply with orders of Tribunal.

26. Whoever fails to comply with any order made by the Tribunal, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten lakh rupees, or with both.

Offences by companies.

27. (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

45 of 1860.

28. All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

Proceedings
before the
Tribunal
to be
Judicial
proceeding.

45 of 1860.

29. The Chairman, Vice-Chairman and other Members and the officers and other employees of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members
and staff
of Tribunal
to be
public
servants.

30. No suit, prosecution or other legal proceeding shall lie against the Central Government or against the Chairman, Vice-Chairman or other Member of the Tribunal or any other person authorised by the Chairman, Vice-Chairman or other Member for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Protection
of action
taken in
good faith.

6 of 1991.

31. Save as provided in the Public Liability Insurance Act, 1991, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to
have over-
riding
effect.

32. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

Power to
make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the particulars which an application shall contain, the documents and the fee which shall be accompanied with it and the limit of annual income of a person so as to enable him to make application without paying any fee, under sub-section (4) of section 5;

(b) any such matter in respect of which the Tribunal shall have powers of a civil court, under clause (i) of sub-section (4) of section 6;

(c) the case or cases which, having regard to the nature of the questions involved, requires or require to be decided by a Bench of more than two members, under clause (d) of sub-section (3) of section 10;

(d) procedure for the investigation of misbehaviour or incapacity of the Chairman Vice-Chairman or other Member of the Tribunal under sub-section (3) of section 14;

(e) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairman, Vice-Chairman and other Members under section 15;

(f) financial and administrative powers of the Chairman over the Benches under section 17;

(g) the salaries and allowances and conditions of service of the officers and other employees of the Tribunal under sub-section (3) of section 18;

(h) the person or the authority by whom, the manner in which and the purposes of environment for which the amount of compensation credited to the Environmental Relief Fund shall be utilised under sub-section (2) of section 23; and

(i) any other matter which is required to be, or may be, prescribed.

(3) Every notification issued under section 4 and every rule made under other provisions of this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or the rule or both Houses agree that the notification or the rule should not be made, the notification or the rule shall there-after have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or the rule.

THE SCHEDULE

[See section 3(1)]

HEADS UNDER WHICH COMPENSATION FOR DAMAGES MAY BE
CLAIMED

- (a) Death;
- (b) Permanent, temporary, total or partial disability or other injury or sickness;
- (c) Loss of wages due to total or partial disability or permanent or temporary disability;
- (d) Medical expenses incurred for treatment of injuries or sickness;
- (e) Damages to private property;
- (f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;
- (g) Expenses incurred by Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;
- (h) Loss to Government or local authority arising out of, or connected with, the activity causing any damage;
- (i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;
- (j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;
- (k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;
- (l) Loss and destruction of any property other than private property;
- (m) Loss of business or employment or both;
- (n) any other claim arising out of, or connected with, any activity of handling of hazardous substance.

STATEMENT OF OBJECTS AND REASONS

The principal of strict civil liability in accident cases arising from the activities involving hazardous substances has been highlighted in a case by the Supreme Court of India. An enterprise engaged in activities with potential threat to the health and safety of the persons residing in the surrounding areas of the factory owes an absolute duty to the community to ensure that no harm is caused to anyone on account of hazardous and inherently dangerous nature of such activities. Cases seeking compensation for damages to human health, property and the environment, particularly contamination of sub-surface water, are increasing. There is also an increasing trend in the number of industrial disasters.

2. The United Nations Conference on Environment and Development held at Rio de Janeiro in June, 1992, in which India participated, has also called upon the States to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. It is deemed expedient to develop and codify the principle of strict civil liability in respect of all such cases where damage is caused while handling hazardous substances. It is proposed to establish a National Environmental Tribunal for effective and expeditious disposal of cases arising from certain industrial accidents and disasters with a view to providing effective and expeditious relief and compensation for damages to human health, property and the environment.

4. The Bill seeks to achieve the aforesaid objects.

NEW DELHI;
The 5th August, 1992.

KAMAL NATH.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 8/6/91/PL(CPW), dated 6th August, 1992 from Shri Kamal Nath, Minister of State of the Ministry of Environment and Forests to the Secretary-General, Lok Sabha.]

The President, having been informed of the proposed bill to provide for effective and expeditious relief, restitution and compensation for damages to human health, property and the environment to the persons affected by the accidents occurring while handling hazardous substance and for matters connected therewith or incidental thereto, recommends under article 117(1) and (3) of the Constitution of India the introduction and consideration of the National Environment Tribunal Bill, 1992 by Lok Sabha.

Notes on clauses

Clause 3 provides for strict liability of owner for damages caused to any person, property or the environment due to any accident occurring while handling any hazardous substance.

Clause 4 confers power on the Central Government to exempt from the operation of the Act, the Central Government, any State Government, any corporation owned or controlled by Government, or any local authority.

Clause 5 provides for making an application for claim for compensation under this Act or for relief as provided in the Public Liability Insurance Act, 1991. It also specifies five years as the limitation period.

Clause 6 provides procedure and powers of the Tribunal which shall be guided by the principles of natural justice and shall have certain powers of a civil court.

Clause 7 empowers the Tribunal to make an interim order and provides for its procedure.

Clause 8 provides for the amount of any relief or other compensation received by any person under any other law to be reduced from the compensation awarded under this Act.

Clause 9 provides for the establishment of a National Environment Tribunal.

Clause 10 provides for the composition of the Tribunal and its Benches and also empowers the Chairman of the Tribunal to function as member on any Bench, to transfer the Vice-Chairman or other Member from one Bench to another Bench, to authorise a member to discharge functions on another Bench, and to form Benches. It also empowers the Central Government to notify places other than Delhi where the Benches shall sit.

Clause 11 lays down qualifications for appointment of a person as Chairman or Vice-Chairman or Member of the Tribunal. All appointments shall be made by the President. The Chairman and Vice-Chairman shall be appointed after consultation with the Chief Justice of India and members shall be appointed on the recommendation of a Selection Committee as specified in sub-clause (7).

Clause 12 provides for appointment of Vice-Chairman as Chairman by the Government in the event of any vacancy and the authorising of Vice-Chairman in cases of absence of Chairman.

Clause 13 specifies five years as the term of appointment and 70 years, 65 years and 62 years as the age of retirement for Chairman, Vice-Chairman and other Members, respectively.

Clause 14 provides for the resignation by, and removal of, Chairman, Vice-Chairman or other Members of the Tribunal. Removal may take place on the ground of proved misbehaviour or incapacity after an inquiry by a Judge of the Supreme Court.

Clause 15 empowers the Central Government to prescribe by rules the salaries, allowances and other terms and conditions of service of Chairman, Vice-Chairman and other Members.

Clause 16 prohibits further employment under the Central or State Government for Chairman or Vice-Chairman or other Members. They cannot also appear, act or plead before the Tribunal.

Clause 17 provides for financial and administrative powers of the Chairman of the Tribunal as may be prescribed in the rules. He may also delegate such powers.

Clause 18 requires the Central Government to provide officers and staff to the Tribunal. Their salaries, allowances and conditions of service shall be prescribed in the rules.

Clause 19 empowers the Central Government to make provisions, by notification, for distribution of business amongst Benches. In case of doubt, decision of Chairman shall be final.

Clause 20 bars the jurisdiction of courts and other authorities where the Tribunal has powers to entertain any application or action for claim.

Clause 21 empowers Chairman to transfer cases from one Bench to another Bench.

Clause 22 provides for decision in a case by majority of members of the Bench.

Clause 23 provides for the deposit and utilisation of amount payable for damage to the environment.

Clause 24 empowers the Tribunal to execute its award as a decree of civil court and also to transmit an order of interim relief to the Collector for execution. Amount of award may also be recovered as arrears of land revenue or of public demand.

Clause 25 provides for appeal to Supreme Court within 90 days on a question of law and after deposit of the money awarded and prohibits any appeal where award is given with the consent of parties.

Clause 26 provides for punishment if any person fails to comply with any order of the Tribunal.

Clause 27 provides for liability of the directors, managers, etc., of a company where an offence is committed by it.

Clause 28 provides that the proceedings before the Tribunal shall be deemed to be judicial proceedings.

Clause 29 provides that the Chairman, Vice-Chairman and Members of the Tribunal shall be deemed to be public servants.

Clause 30 provides protection for anything which is in good faith done or intended to be done under the Act or the rules.

Clause 31 provides that this Act shall have overriding effect.

Clause 32 confers power on the Central Government to make rules to carry out the purposes of this Act.

FINANCIAL MEMORANDUM

Clause 9 of the Bill relates to the establishment of a National Environment Tribunal. Under sub-clause (5) of clause 10, Benches of the Tribunal may sit also at such places, other than Delhi, as the Central Government may, by notification, specify. Expenditure on setting up of one Bench is estimated at Rs. 15 lakhs approximately. Non-recurring expenditure on four Benches, which the Government intends to set up for the time being, is estimated at Rs. 18.2 lakhs and recurring annual expenditure at Rs. 42.6 lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to empower the Central Government to exempt by notification, from the operation of the Act the Central Government, any State Government, any corporation owned or controlled by any Government or any local authority.

2. Clause 32 empowers the Central Government to make rules regarding—

(a) the particulars which an application shall contain, the documents and the fee which shall be accompanied with it and the limit of annual income of a person so as to enable him to make application without paying any fee, under sub-section (4) of section 5;

(b) any such other matter in respect of which the Tribunal shall have powers of a civil court, under clause (i) of sub-section (4) of section 6;

(c) the case or cases which, having regard to the nature of the questions involved, requires or require to be decided by a Bench of more than two members, under clause (d) of sub-section (3) of section 10;

(d) procedure for the investigation of misbehaviour or incapacity of the Chairman, Vice-Chairman or other Member of the Tribunal under sub-section (3) of section 14;

(e) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairman, Vice-Chairman and other Members under section 15;

(f) financial and administrative powers of the Chairman over the Benches under section 17;

(g) the salaries and allowances and conditions of service of the officers and other employees of the Tribunal under sub-section (3) of section 18;

(h) the person or the authority by whom, the manner in which and the purpose of environment for which the amount of compensation credited to the Environmental Relief Fund shall be utilised under sub-section (2) of section 23; and

(i) any other matter which is required to be, or may be, prescribed.

3. The matters with respect to which notification may be issued or rules may be made under the aforesaid provisions are matters of procedure and detail. The delegation of legislative power contained in such provisions is, therefore, of a normal character.

C. K. JAIN,
Secretary-General.